10

AN ANSVVER To this *Quodlibetical* QUESTION.

Whether the Biſhops *make a Fundamental, and Eſſential part of the Engliſh* PARLIAMENT:

COLLECTED

Out of ſome Memorials in a larger Treatiſe, for the Information of ſome, the Confirmation of others, and the ſatisfaction of all.

De Legib. & longa Conſuet.

Si de interpretatione Legis quæritur, imprimis inſpiciendum eſt, pro jure civitas retro, in hujuſmodi caſibus, uſa fuit: Conſuetudo enim optima interpretatio *legis eſt.*

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AN ANSVVER To this *Quodlibetical* QUESTION. viz.

Whether the Biſhops *be a Fundamental, and Eſſential part of the Engliſh Parliaments?*

WHereas a great Queſtion hath been raiſed of late, and but lately neither; *Whether the* Biſhops *make a Fundamental, and Eſſential part of the Engliſh Parliament?* I hope to put it out of queſtion by two ſorts of Arguments, of which the one ſhall be *de jure*, and the other *de facto* The one derived from that original right which is veſted in them, the other from the conſtant exerciſe and continual practice, by which that right hath been enjoyed in all times foregoing.

And firſt we ſhall begin with the proofs *de jure*, and therein firſt with that which doth occurre in the Laws of King *Athelſton*, one of the firſt Monarchs of the Engliſh Saxons. Among which there is a Chapter (it is *chap.* 11.) entituled *De officio Epiſcopi & quid pertinet ad officium ejus*; that

is to say, Touching the office of a Bishop, and that which doth of right belong unto it. In which Chapter it is thus declared, *viz. Episcopo jure pertinet omnem rectitudinem promovere, Dei scilicet & seculi &c.* (†) *& convenit ut per consilium & testimonium ejus omne Legis scitum, & Burgi mensura, & omne pondus sit secundum dictionem ejus institutum*; that is to say, it belongeth of right unto the *Bishop*, to promote Justice in matters which concern both the Church and State, and unto him it appertaineth, that by his Counsel and award, all Lawes, and Weights, and Measures, be ordained throughout the Kingdom.

(†) Spelm. Counsel. p. 402.

2*ly*. Next, we will have recourse to the old *Record* entituled, *Modus tenendi Parliamentum*; In which it is affirmed, *ad Parliamentum Summoniri & venire debere* Archiepiscopos, Episcopos, *Abbates, Priores, & alios majores* Cleri, *qui tenent per Comitatum aut Baroniam ratione hujusmodi tenuræ*; (*) That all the *Archbishops, Bishops, Abbats, Priors*, and other *Prelates* of the Church, who hold their Lands either by an *Earls* Fee, or a *Barons* Fee, were to be summoned, and come to *Parliament* in regard of their Tenure.

(*) *Modus tenendi Parliamentum.*

3*ly*. Next, look we on the Chartularies of King *Henry* the first, recognized in full Parliament at *Clarendon*, under *Henry* the second, where they are called *Avitas consuetudines*, which declare it thus, *Archiepiscopi, Episcopi, & universa Personæ qui de Rege tenent in capite, habeant possessiones suas de Rege sic ut Baroniam, &c. Et sicut cæteri Barones debent interesse judicijs Curiæ Regis cum Baronibus, quousque pervenierat ad dimmutionem membrorum vel ad mortem* (*) The meaning is in brief, that *Archbishops*, *Bishops*, and all other Ecclesiastical persons which hold *in Capite* of the King, are to have and hold their Lands in *Barony*, *and that they ought as Barons* to be present in all Judgments with the other *Barons* in the Court of *Parliament*, until the very Sentence of Death or Mutilation (which was very common in those times) was to be pronounced. And then they commonly did use to withdraw themselves, not out of any incapacity supposed to be in them by the Law of *England*, but out of a restraint imposed upon them by the Canons of the Church of *Rome*.

(*) *Math. Paris in Hen. 2.*

4*ly*. In

4*ly*. In the *Great Charter* made by King *John*, in the laſt of his Reign, we have the form of ſummoning a *Parliament*, and calling thoſe together who have Votes therein, thus expreſſed at large. And *Habendum commune concilium Regni de auxilio aſſidendo, &c. Et de ſcutagiis aſſidendis, faciemus ſummoneri Archiepiſcopos, Abbates, Comites, & majores Barones Regni ſigillatim per litteras noſtras: & preterea ſummoneri faciemus in generali per Vice-Comites & Ballivos noſtros omnes alios qui in Capite tenent ad certum diem, ſcil. ad terminum 40 dierum ad minus, & ad certum locum, &c.* (†) In which we have not only a moſt evident proof, that the *Biſhops* are of right to be called to *Parliament*, for granting Subſidies and *Eſcuage*, and treating of the great Affairs which concern the Kingdom, but that they are to be ſummoned by particular Letters, as well as the *Earls* and *Barons* or either of them; A form or copie of which Summons iſſued in the time of the ſaid King *John*, is extant on Record, and put in Print not many years ſince in the Titles of Honour. (†) *Id in Joh.* (†) *P. 1. 10.* 5.

5*ly*. We have it thus in the *Magna Charta* of King *Henry* the 3*d*. the birthright of the *Engliſh* Subject, according as it ſtands tranſlated in the book of Statutes. *Firſt we have granted to God, and by this our preſent Charters have confirmed for us, and our Heirs for ever, That the* Church of England, *ſhall be free, and ſhall enjoy all her whole* Rights and Liberties *inviolable*, (†) But it is a known *Right and Liberty* of the Church of *England*, that all the *Biſhops*, and many of the greater *Clergy* (and peradventure alſo the *Inferiour Clergy* in the ſaid Kings time) had their *Votes* in *Parliament*; and therefore is to be preſerved *inviolable* by the Kings of *England, their Heirs, and Succeſſors for ever*. Which Charter, as it was confirmed by a ſolemn Curſe denounced on all the Infringers of it, by *Boniface* Arch-Biſhop of *Canterbury*, (†) and ratified in no fewer, then 80. ſucceeding Parliaments: So was it Enacted in the raign of *Edward* the firſt, 3. That *it ſhould be ſent under the great Seal of* England, *to all the Cathedral Churches of the Kingdome, to be read twice a year* before the people; (†) That they ſhould be ready four times every year in a full County Court, (*) and finally (†) *Magna Charta cap. 1,* (†) *Matth. Paris in Hen.* 3. (†) 28. *Edw.* 1. *c.* 1. (*) 28 *Edw.* 1. *c.* 2.

ly that *all Judgements given against it should* be void and null; (†) the application of which last clause I refer to those, to whom the rectifying of the Error (which to the contrary thereof hath been committed) doth of right belong.

(†) 28. *Edw.* 1. *c.* 3.

6ly. We have the protestation of *John Stratford*, Arch-Bishop of *Canterbury*, in the time of King *Edward* the 3*d.* who being in disfavour with the King, and denied entrance in to the House of *Peers*, Challenged his place, and suffrage there, as the *first Peer of the Realm*, and One that *ought to have the first voice in* Parliament, in right of his See.

But hear him speak his own words, which are these that follow, *Amici* (for he spake to those that took witnesse of it) *Rex me ad hoc Parliamentum scripto suo vocavit, & ego tanquam* major par Regni *post Regem*, & primam vocem habere debens *in Parliamento*, jura Ecclesiæ meæ Cantuarensis *vendico*, & *ideo ingressum in* Parliamentum peto (†) which makes it plain enough, that the Arch-Bishop did not challenge a place in Parliament, as the first Peer of the Realm, either by way of favour, or of custome only, but as a power and privelege as he ought to have (*habere debens* are the words) in the Right of his See.

(†) *Antiqui, Britan in Gati. Stratford.*

7ly. And lastly, there is the protestation on Record of all the Bishops in the raign of King *Richard* the 2*d.* at what time *William Courtney* was Arch-Bishop of *Canterbury*: who being to withdraw themselves from the house of *Peers*, at the pronouncing of the sentence of death on some guilty Lords, first made their *Procurators* to supply their rooms, and then put up their *protestations* to preserve their Rights; the sum whereof, for as much as doth concern this businesse in their own words thus. De jure, & consuetudine *Regni* Angliæ *ad Archiepiscopum* Cantuarensem, *qui pro tempore fuerit, nec non cæteros* Suffraganos, *confratres, & compatres, Abbates & Priores, Aliosque Prelatos quoscunque per* Baroniam *de Domino Rege tenentes*, Pertinet, *in Parliamentis Regis quibuscunque*, ut Pares *Regni prædidi personaliter interesse ibidemque de* Regni negotiis, *ac aliis tradari consuetis cum cæteris didi Regni* paribus, *& aliis ibidem* jus interessendi *habentibus Consulere, & Tradare, Ordinare, Statuere, & Diffinire,*

ac

ac cætera facere quæ Parliamento ibidem imminent facienda. (†) It appertaines say they, both by Right and Custome to the Arch-Bishop of *Canterbury* for the time being. As also unto all the rest of his Compeers, as well the Suffragan Bishops, as to the Abbots, Priors, and other Prelates whatsoever, which hold their Land by *Barony* of our Lord the King, to be personally present at all Parliaments as *Peers of the Realm*, and three together with the rest of the Peers, and all other which have Right to be therein present to Consult, Treat of, and Ordain, and finally to determine and establish all such things, and matters, as are accustomably handled, and ordained in Parliaments. Which sets the matter as I take it beyond all dispute, as to the first of these two heads, or sorts of Arguments, whereby I was to prove this point, which were those *de jure*.

(†) *In vita Gu. Courtney.*

Let us next see whether this *Right* of theirs be confirmed, and countenanced by continual practise, and that they have not lost it by *Discontinuance*: which is my second kind of Argument, those I mean *de facto*. And in this way of proof, we can goe as high, as the first preaching of the Gospel to the *English Saxons*, and so descend unto those last times without interruption. By which it will appear, that Christianity in this Nation, and the Bishops Votes in Parliaments, and Common Councils, are of like Antiquity.

For first, no sooner had King *Ethelbert* received the Gospel, but presently we read, that as well the *Clergy*, as the *Laity*, were summoned to the Common Council: which the *Saxons* sometimes called *Mycell Synoth*, the great Assembly, and sometimes *Wittenegemote*, the Counsell or Assembly of the Wise men of the Realm. *Anno* 605. *Ethelbertus Rex in fide corroboratus Catholicâ* &c. Cantuariæ *convocavit Commune Consilium tam* Cleri, *quam populi*; King (†) *Ethelbert* as my Author hath it, being confirmed in the Faith in the year 605. (which was but nine years after his Conversion) together with *Bertha* his Queen, their Son *Thalbald*, the reverend Arch-Bishop *Augustine*, and all the rest of the Nobility, did solemnize the Feast of Christs Nativity in the City of *Canterbury*; and did there cause to be assembled on

(†) *H. Spelman in Concil. p.* 116.

the 9th. of *January*, the *Common Council* of his Kingdome; as well the Clergy, as the Lay-Subject, by whose Consent, and Approbation, he caused the Monastery by him built to be dedicated to the honour of God Almighty, by the hand of *Augustine*.

And though no question other examples of this kind may be found amongst the *Saxon Heptarches*, yet being the *West Saxon* Kingdome did in fine prevail, and united all the rest into one *Monarchy*; We shall apply our selves unto that more punctually, and with greater care.

I. And first we read of *Egbert*, who first united the seven Kingdomes of the *Saxons* under the common name of *England*, that he caused to be convened at *London* his Bishops, and the Peers of the highest rank, *pro consilio capiendo adversus Danicos Pyratas*, (†) to advise upon some course against the *Danish* Pirates, who infested the Sea-coast of *England*.

(†) *Charta Urbitlagij mercyo-um Regis ap. Ingulph.*

II. Another Parliament or Council (call it which you will) called at *Ringbury*, *Anno* 855. in the time of *Ethelwolph*, the Son of *Egbert*, *pro negotiis Regni*, (†) to treat of the affairs of the Kingdome: the Acts whereof are ratified and subscribed by the *Bishops*, *Abbats*, and other great men of the Realm.

(†) *Charta Bertult mir. Regis ap. Ingulf.*

III. We find that the same King *Ethelwolph* in a Parliament, or Assembly of his States at *Winchester*, *Anno* 855. *Cum consilio Episcoporum, & Principum*, (†) by the Advice and Councel of the *Bishops*, and Nobility, confirmed unto the *Clergy* the tenth part of all mens Goods; and ordered that the Tythe so confirmed unto them should be free *ab omnibus Secularibus Servitutibus*, from all secular Services, and Impositions.

(†) *Ingulf Croyland. hist.*

IV. The two Charters were issued out by *Athelstone*, above mentioned, *Consilio Wifelmi Archiepiscopi mei, & aliorum Episcoporum meorum*, (†) by the advice of *Wifelme* his Arch-Bishop, and his other Bishops.

(†) *Ap Eund. p. 402, 403.*

And 5*ly*. That *Ina* in the year 902. caused the great Council of his Realm to be Assembled, consisting *ex Episcopis, Principibus, Proceribus*, &c. of Bishops, Princes, Nobles, Earls, and of all the wise men, Elders, and people of the

the whole Kingdom, and there Enacted divers Laws for the weal of his Realm. (†) We also read this in the Reign of *Edrid*, Anno 948. *viz. In festo igitur nativitatis* Beatæ Mariæ *cum universi Magnates Regni per Regium edictum summoniri, tam* Archiepiscopi, *&* Episcopi, *ac* Abbates, *quam ceteri totius Regni proceres & optimates* Londiniis *convenissent ad tractandum de negotijs publicis totius Regni*; (†) That in the Feast of the Nativity of the blessed *Virgin*, the great men of the Realm, that is to say *Archbishops, Bishops, Abbots*, Nobles, Peers, were summoned by the Kings Writ to appear at *London*, to handle, and conclude about the publick Affairs of the Kingdom. Mention of which Assembly is made again at the foundation and endowment of the Abby of *Crowland*; (†) and afterwards a confirmation of the same by *Edgar*, Anno. 966. *Præsentibus Archiepiscopis, Episcopis, Abbatibus, & optimatibus Regni*; (†) In the presence of *Archbishops*, Bishops, Abbots, and Peers of the Realm. The like Convention of *Estates* we find to have been called by *Canutus* the *Dane*, after the death of *Edmund Ironside*, for the setling the Crown on his own head, of which thus the Author (†) *Cujus post mortem Rex* Canutus *omnes* Episcopos, *&* *Duces, nec non & Principes, cunctosque optimates gentis* Angliæ, Londoniæ *congregari jussit.* Where we still find the *Bishops* to be called to *Parliament*, as well as the Dukes, Princes, and the rest of the Nobility; and to be ranked and marshalled first, (which clearly shews that they were alwayes reckoned for the *first Estate*) before the greatest, and most eminent of the *secular* Peers. And so we find it also in a Charter of King *Edward* the *Confessor*, the last King of the *Saxon* Race) by which he granted certain Lands, and Privileges to the Church of *Westminster*, Anno 1066. *Cum Concilio, & decreto* Archiepiscoporum, Episcoporum, *Comitum aliorumque optimatum*; (*) with the Counsel and Decree of the *Archbishops, Bishops*, Earls, and others of his Nobles. And all this while the *Bishops* and other Prelates of the Church did hold by no other Tenure, than *in purô & perpetuô Eleemosynâ*; (*) or frank *Almoigne*, as our Lawyers call it: and therefore sate in *Parliament* in no other capacity than as spiritual persons meerly; who

(†) *ap. eund. p. 219.*

(†) *Id ibid. p. 497. edit. Lon.*

(†) *M. id p. 500.*

(†) *Id p. 5. p. 1. 50.*

(†) *Rog. Hoveden Annal. pag. prior p. 250.*

(*) *ap. H. Spel. in Concil. p. 630.*

(*) *Camden in Brit.*

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by their extraordinary knowledge in the Word of God, and in such other parts of Learning, as the world then knew, were thought best able to direct and advise their Princes in all points of difficulty. But when the *Norman* Conquerour had possest the State, then the case was altered. The *Prelates* of the Church were no longer suffered to hold their Land in *frank Almoigne*, as before they did, or to be free from secular services and commands, as before they were. Although they kept their Lands, yet they changed their Tenure, and by the Conquerour were ordained to hold their Lands, *sub militari servitute*, (*) either in *Capite*, or by *Baronage*, or some such *military* hold, and thereby were compellable to aid the Kings in all times of War, with Men, Arms, and Horses, as the Lay-Subjects of the same *Tenures* were required to do.

(*) *Mat. Paris in Will. 1. An.* 1070.

Which though it were conceived to be a great *disfranchisement* at the first, and an heavy burthen to the *Prelacy*; yet it conduced at last to their greater honour, in giving them a further title to their place in *Parliament*, than that which formerly they could pretend to. Before, they claimed a place therein, *ratione Officii*, only by reason of their Offices, or *Spiritual* Dignities; But after this, by reason also of those *Baronies* which were erected, and annexed to their several Dignities; *En respect de lour possessions L' antient Baronies annexes a lour dignities* (†) as our Lawyers have it. From this time forwards we must look upon them in the House of *Parliament*, not as Bishops only, but as *Peers* and *Barons* of the Realm also; and so themselves affirmed to the Temporal Lords in the *Parliament* holden at *Northampton*, under *Henry* the second. *Non sedimus hic* Episcopi, *sed* Barones *Pares hic sumus*; (†) We sit not here say they, as *Bishops only*, but as *Barons*; we are *Barons*, and you are *Barons*; here we sit as *Peers*. Which last is also verified *terminis*, by the words of a Statute, or Act of Parliament, wherein the *Bishops* are acknowledged to be *Peers of the Land*.

(†) *Stanford Pleas. l. 3.*

(†) *Selden titles of hon. p. 2. 18.*

But to proceed more particularly to our proofs *de facto*, after the alteration of their Tenure by the *Norman* Conquerour, we find a Parliament assembled in the fifth year of that

that King wherein are preſent *Epiſcopi, Abbates, Comites, & primats totius Angliæ,* (†) the *Biſhops*, Abbats, Earls, and the reſt of the Baronage of *England*.

(†) *Matth. Paris in Willielmo 1.*

And 2*ly*. In the ninth year of *William Rufus*, an old Author telleth us, *de regni ſtatu acturus*, Epiſcopos, *Abbates, & quoſcunque regni proceres in unum præcepti ſui ſanctione egit*, that being to conſult of the Affairs of the Kingdom, he called together by his Writ the *Biſhops*, Abbots, and all the Peers of the Realm, (†)

(†) *Eadmer hiſt. Nov. l. 2.*

And 3*ly*. During the raign of King *Henry* the firſt (for we will take but one example out of each Kings raign, though each Kings raign would yeild us more) a *Parliament* was called at *London*, wherein were many things diſpatched, as well of *Eccleſiaſtical*, as Secular nature, the *Biſhops*, and Abbots being preſent with the other Lords; *Coacto apud* Londoniam *Magno* Epiſcoporum, *& Procerum, Abbatumque conſilio*, multa Eccleſiaſticarum, & Secubarium rerum ordinata negotia, dieiſa Litigia, ſaith the Monk of *Malmsbury* (†) And of this *Parliament* it is, I take it, that *Edmor* ſpeaketh *Hiſt. Novel. l.* 4. *p.* 91.

(†) *Malsb. Hiſt. Reg. Aug. l.* 5.

Proceed we 4*ly*. to King *Henry* the ſecond (for King *Stephens* Raign was ſo full of Wars and Tumults, that there is very little to be found of *Parliaments*) and there we find the *Biſhops* with the other *Peers*, convened in Parliament for the determination of the points in controverſie between *Alphonſo* King of *Caſtile* and *Sancho* King of *Navarre*, referred by compromiſe to the King of *England*, and here determined by King *Henry* amongſt other things, *Habito cum* Epiſcopis, *Comitibus* & *Baronibus* cum deliberatione *Conſilio*, as in *Roger Hoveden*. (†)

(†) *Hoveden Annal. pac. Roſe in H n. 2.*

5*ly*. Next time comes *Richard* the firſt, his Son; during whoſe Impriſonment by the *D. of Auſtria*, his Brother *John* then Earl of *Moriton*, endeavoured by force and cunning in *Normandy* to ſet the Crown on his own head: which cauſed *Hubert* the Archbiſhop of *Canterbury*, to call a Parliament (*Convocatis coram eo Epiſcopis, Comitibus & Baronibus Regni*, (†) wherein the Biſhops, Earls, and Barons, did with one conſent agree to ſeize on his Eſtate, and ſuppreſſe his power, the better to preſerve the King-

(†) *Id. in l b.*

dome in Wealth, Peace, and Safety.

6ly. After succeeded *John* and he calls a *Parliament*, wherein were certain Laws made for the defence of this Kingdome, *Communi aſcenſu* Archiepiſcoporum, Epiſcoporum, *Comitum, Baronum & omnium fidelium ſuorum Angliæ*, by the Common Counſel and Aſſent of the *Archbiſhops, Biſhops*, Earls, Barons, and the reſt of his Lieges. (Remember what was ſaid before touching the Writ of Summons in the ſaid Kings time) from this time till the laſt *Parliament* of King *Charles*, there is no Kings Reign of which we have not many, (though not all) the Acts of Parliament ſtill in Print amongſt us. Nor is there any Act of Parliament in the Printed Books, to the Enacting of which the Biſhops Approbation and Conſent is not plainly ſpecified, either in the general *Proeme* ſet before the Acts, or in the body of the Acts themſelves, as by the Books themſelves doth at large appear.

7ly. And to this kind of proof may be further added the Form and Manner of the Writ, by which the Prelates in all times have been called to Parliament, being the very Law *Verbatim*, with that which is directed to the Temporal Barons, ſave that the Spiritual Lords are commanded to attend the Service, *in fide & dilectione*, the Temporal *in fide & Homagio*, and of late times *in fide & Ligeantia quibus nobis tenemini.* A Form or Copie of which Summons as antient as King *Johns* time, is ſtill reſerved upon Record, directed *Nominatim* to the Arch-Biſhop of *Canterbury*; (†) and then a *ſcriptum eſt ſimiliter* to the reſidue of the *Biſhops*, Abbates, Earls, and Barons. Then adde the *Privilege* of Parliament for themſelves and their Servants, during the time of the Seſſions; the Liberty to *kill, and take one or two of the Kings Deer, as they paſſe by any of his Foreſts in coming* to Parliament *upon his Commandment*, (†) their injoying of the ſame immunities, which are and have been heretofore injoyed by the *Temporal* Barons; (†) and tell me if the Biſhops did not ſit in *Parliament* by as good a Title as the Temporal Lords, and therefore certainly *Eſſential, Fundamental* parts of the Court of Parliament.

(†) *Titles of Hon. part 2. cap. 1.*

(†) *Charta de foreſta cap.*

(†) *Camden in Britania.*

By this diſcourſe it may appear, that the Biſhops Sit and Vote

Vote in Parliament by a double capacity; as Biſhops firſt in reference to their ſeveral Sees, and ſecondly as *Peers* in regard of their *Baronies.* In both reſpects accounted one of the three Eſtates, and the firſt alſo of the three, as from the Premiſes may be gathered without any great trouble. But in ſo nice a point as this, we ſhall not only build upon general *Inferences*, but particular *Evidences.*

And firſt it is affirmed by *Titus Livius*, in his relation of the Life and Reign of King *Henry* the 5*th. That when his Funerals were ended, the* 3 *Eſtates of the Realm of* England *did aſſemble together, and declare his Son King* Henry *the* 6th. *being an Infant of* 8 *Months old, to be their Soveraign Lord,* (†) as his Heir and Succeſſor. And three Eſtates there could not be to perform that ſervice, unleſſe the Biſhops were acknowledged to be one of the number.

(†) *Tit. Liv. M. S. in Bibl. Bodl.*

2*ly.* "In the Parliament Roles of King *Richard* the "third, there is mention of a Bill, or Parchment preſented "to that Prince, being then Duke of *Glouceſter*, on the be- "half, and in the name of the 3 *Eſtates* of the Realm of "*England*, that is to wit, of the *Lords Spiritual*, and Tem- "poral, and of the Commons by name: which for as much "as neither the ſaid 3 *Eſtates*, nor the perſons which deli- "vered it on their behalf, were then aſſembled in form of "Parliament, was afterwards in the firſt Parliament of that "King, by the ſame *three Eſtates*, aſſembled in this preſent "Parliament (I ſpeak the very words of the Act it ſelf) "and by Authority of the ſame enrolled, recorded, and ap- "proved; (†) And at the requeſt and by the aſſent of the "*three Eſtates* of this Realm, that is to ſay, the Lords *Spi-* "*ritual*, and *Temporal*, and *Commons* of this Land Aſſem- "bled in this preſent Parliament, and by Authority of the "ſame it be pronounced, decreed, and declared, that our "ſaid Soveraign Lord the King was, and is the very and un- "doubted Heir of this Realm of *England*, &c.

(†) *An. Speed in K. Rich.* 3.

And 3*ly.* So it is acknowledged in a (†) Statute of 1 *Eliz. Eliz. cap.* 3. where the Lords *Spiritual* and *Temporal*, *and the Commons in that Parliament Aſſembled*, being ſaid expreſſly and *in terminis* to repreſent the *three Eſtates* of the Realm of *England*, did recognize the Queens *Majeſtie to be*

(†) 1 *Eliz. Cap.* 3.

their true, Lawful and Undoubted Soveraign Leig'd Lady and *Queen*. And in a *Statute* of the 8*th*. year of the ſaid Queens Reign, the Biſhops and Clergy are declared to be the *greateſt Eſtates of the Realm*; and called the *High Eſtate of Prelacy*, in another place.

It may perhaps be thought unneceſſary, or impertinent to adde the Teſtimony and Authority of a private perſon, to that which hath been ſaid by our Laws and Statutes. But being it is ſuch a Perſon as was accounted for the Oracle of Law when he ſerved in Parliament his Judgement may be taken for a creditable and ſufficient Evidence in the preſent Caſe. It is the Teſtimony and Authority of Sir *Edward Coke*, ſucceſſively Chief Juſtice of either Bench; who in his book *concerning the Juriſdiction of Courts*, ſpeaks thus of Parliaments, (†) "This Court (ſaith he) conſiſteth of the "Kings Majeſty ſitting there as in his Royal Politick Capa- "city, and of the three Eſtates of the Realm, *viz.* of the "Lords Spirituall, *Archbiſhops*, and *Biſhops*, who ſit there "by Succeſſion in reſpect of their Counties, Baronies, parcel "of their Biſhopricks which they hold alſo in their Politick "Capacity; And every one of theſe when any Parliament "is to be holden, ought *ex debito Juſtitiæ* to have a Writ of "Summons. Secondly, the Lords Temporal, Dukes, Marqueſ- "ſes, Earls, Viſcounts, and Barons, who ſit there by rea- "ſon of their dignities, which they hold by Diſcent or Crea- "tion, and likewiſe every one of theſe being of full age, "ought to have a Writ of Summons *Ex debito Juſtitiæ*. The "3*d*. *Eſtate* is the Commons of the Realm, whereof there "be Knights of Shires or Counties, Citizens of Cities, and "Burgeſſes of Burghes. All which are reſpectively Elect- "ed by the Shires or Counties, Cities and Boroughs, by "force of the Kings Writ *ex debito Juſtitiæ*, and none of "them ought to be omitted: And theſe repreſent all the "Commons of the whole Realm, and are truſted for them. So He, and this is plain enough beyond all exception.

(†) *Coke of Parl. Fol.* 1.

Adde hereunto *ex abundanti*, that in all Chriſtian Kingdomes of the *Gothick Model*, there are no more nor fewer than three eſtates, convented at the will and pleaſure of the Supreme Prince, for their aſſiſtance and advice in Affairs of con-

conſequence; that is to ſay, the Biſhops and other Eccleſiaſtical perſons who are alwayes one, the *Nobles* for themſelves, and the *Commiſſioners* for the *Commons* of their ſeveral *Provinces*; For ſo we find it in the Conſtitution of the Roman Empire and the Realms of *Spain*, the Kingdoms of *France*, *Poland* *Hungary*, together with thoſe of *Denmark*, *Sweden*, and the Realm of *Scotland*. And it were ſtrange if in the Conſtitution of the *Engliſh Parliaments*, or *conventus ordinum*, the Biſhops ſhould have been left out and none at all elected to preſent the *Clergy*. But being admitted with the reſt in thoſe publique meetings, and being looked on as the *firſt Eſtate* in the *Stile* of that *Court*; it muſt needs be, that their excluſion ſhakes the very fundamentals of the ſaid Aſſemblies, and makes the whole *Body* to be maimed and mutilated for want of ſuch a *principal Member*, ſo neceſſary to the making up of the whole *Compoſitum*.

But againſt all this it is objected, firſt, that ſome Acts have paſſed in *Parliament*, to which the *Prelates* did not *Vote*, nor could be preſent in the Houſe when the Bill was paſſed; as in the ſentencing to death, or mutilation of a guilty perſon: as doth appear both by the Laws and Conſtitutions recognized at *Clarendon*, and the following practice. This hath been touched upon before, and we told you then, that this reſtraint was laid upon them, not by the common Law of *England*, or any *Act* or Ordinance of the Houſe of *Peers*, by which they were diſabled to attend that ſervice. It was their own voluntary Act, none compelled them to it, but only out of a conformity to ſome former Canons, *ad Sanctorum Canonum inſtituta*, (†) as their own words are) by which it was not lawful for the *Clergy men*, to be either Judges or Aſſeſſors in *cauſa ſanguinis* (†). And yet they took ſuch care to preſerve their Intereſts that they did not only give their *Proxies* for the repreſenting of their perſons, but did put up their proteſtations, with a *ſalvo jure*, for the preſerving of their Rights for the time to come: *Jure* Paritatis *& intereſſendi in dicto Parliamento* (†) *quoad omnia & ſingula ibi exercenda in omnibus ſemper ſalvo*, as the manner was. Examples of the which are as full and frequent, as

(†) *Antiqui. Britan. in Gul. Courtney.*

(†) *Conſtitut. Otholbon. Fol. 45.*

(†) *Antiqu. Britan. in Gul. Courtney.*

their withdrawing themselves on the said occasions.

But then the main Objection is, that as some *Acts* have passed in *Parliamen, absentibus Prelatis*, when the Bishops did absent themselves of their own accord; so many things have been transacted in the Parliament *Excluso Clero*, when the Clergy have been excluded or put out of the House by some *Act* or *Ordinance*. A *President* for this hath been found and published by such as envied that poor remnant of the Churches honour: though possibly they will find themselves deceived in their greatest hopes, and yet the evidence will not serve to evince the cause. The Author of the Pamphlet entituled, *the Prerogative* and *practice of Parliaments*, first layes this *Tenet* for his ground, that many good *Acts* of Parliament may be made, though the *Archbishops*, and *Bishops* should not consent unto them (†) (which is a point that no man doubts of, considering how easily their *Negative* may be over-ruled by the far greater number of the secular *Peers*.) Then he adds that in a Parliament holden at St. *Edmunsbury*, 1196. in the Reign of *Edward* the first, a Statute was made by the King, the Barons, and the Commons, *excluso Clero*, and for the proof hereof referres us unto Bishop *Jewill*.

(†) *Printed at London, 1628 p. 31.*

Now Bishop *Jewill* saith indeed, "That in a Parliament "holden at St. *Edmunsbury* by King *Edward* the first, *Anno* "1296. the Archbishops and Bishops were quite shut forth, "and yet the Parliament holden, and good and wholesome "Lawes were there Enacted, the departing or absence of "the Lords *Spiritual* notwithstanding. (†) In the Records "whereof it is written thus, *Habito Rex cum Baronibus suis* "*Parliamento, & Clero excluso, statutum est, &c.* The King "keeping the Parliament with his Barons, the Clergie, (that "is to say, the *Archbishops*, and *Bishops*,) being shut forth, "it was enacted, &c. Wherein who doth not see, if he hath any eyes, that by this reason, (if the proof be good) many good *Acts of Parliament* may be made, though the *Commons* either out of absence or opposition should not consent unto the same: of whose consent unto that *Statute* (whosoever it was) there is as little to be found in that *Record*, as the concurrence of the *Bishops*. But for answer unto so much of this

(†) *Defence of the Apolog. part 6. c. 2. S. 3.*

Record

Record ſo often ſpoke of, and applauded, as concerns the Biſhops, we ſay, that this (if it be truly ſenced, as I think it is not) was the particular Act of an Angry and offended King againſt his *Clergy*, not to be drawn into example as a proof or argument againſt a moſt clear, known, and undoubted Right.

The cauſe ſtood thus, A Conſtitution had been made by *Boniface* the eighth: *Ne aliqua collecta ex eccleſiaſticis proventibus Regi, aut cuivis alij Principi concedatur*; (†) that *Clergie men* ſhould not pay any Tax or Tallage unto Kings or Princes out of their Spiritual preferments, without the leave of the *Pope*. Under pretence whereof, the *Clergy* at this Parliament at St. *Edmunsbury*, refuſed to be contributory to the Kings occaſions, when the *Lay-Members* of the Houſe had been forwards in it. The King being herewith much offended, gives them a further day to conſider on it, Adjourning the Parliament to *London*, there to begin on the morrow after St. *Hilaries* day; and in the mean time commanded all their Barnes to be faſt ſealed up. The day being come, & the *Clergy* ſtill perſiſting in their former obſtinacy, *Excluſo & Parliamento Clero Conſilium Rex cum ſolis* Baronibus *& populo habuit, totumque ſtatim* Clerum *protectione ſua privavit* (†) the King (ſaith the Hiſtorian) excluding the *Clergy* out of the Parliament, adviſed with his *Barons*, and his people only, what was beſt to be done, by whoſe advice he put the *Clergie* out of his protection, and thereby forced them to conform to his will and pleaſure.

(†) *Math. weſtm. in Edw. 1.*

(†) *Antiqu. Brit. in R. Winchelſey.*

This is the *ſumma totalis* of the buſineſſe, and comes unto no more but this, that a particular courſe was adviſed in Parliament on a particular diſpleaſure taken by the King againſt the body of his *Clergy* then convened together, for their particular refuſal to contribute to his wants and Wars, the better to reduce them to their natural duty. Which makes not any thing at all againſt the right of *Biſhops* in the Houſe of *Peers*, or for excluding them that Houſe, or for the validity of ſuch *Acts* as are made in Parliament during the time of ſuch excluſion; eſpecially conſidering that the King ſhortly after called his *States* together, and did excuſe himſelf

himself for many extravagant Act which he had committed (†) against the Liberties of the Subject (whereof this was one) laying the blame thereof on his great occasions, and the necessity which the Warrs which he had abroad did impose upon him.

(†) *Wolsingh. in Edw. the 1. Anno 1297.*

And so much as in answer unto that Record, supposing that the words thereof be rightly fenced, as I think they are not, and that by *Clerus* there we are to understand *Archbishops* and *Bishops*, as I think we be not, there being no record (I dare boldly say it) either of History or Law, in which the word *Clerus* serves to signifie the *Archbishops* and *Bishops*, exclusive of the other *Clergy*; or any writing whatsoever, wherein it doth not either signifie the whole *Clergy* generally, or the *inferiour Clergy* only exclusive of the *Archbishops Bishops*, and other Prelates. Therefore in answer unto that so much applauded Cavill of *Excluso Clero*, from what Record soever it either hath been hitherto, or shall hereafter be produced, I shall propose it to the consideration of the sober Reader, whether by *Clerus* in that place or in any other of that kind and time, we must not understand the *Inferiour Clergy*, as they stand distinguished in the Laws from my Lords the Bishops.

For howsoever it be true that *Clerus* in the *Ecclesiastical* notion of the word doth signifie the whole *Clergy* generally, Archbishops, Bishops, Priests, and Deacons: Yet in the Legal notion of it, it stands distinguished from the *Prelates*, and signifyeth only the inferiour *Clergy*. Thus do we find the *Ecclesiasticks* of this Realm divided into *Prelates*, *men of Religion*, and other *Clerks*, 3 *Edw.* 1. *cap.* 1. the *Seculars* either into *Prelates* and *Clerks*, 9 *Edw.* 2. *cap.* 3. 1 *Rich.* 2. *cap.* 3. or *Prelates*, and *Clerks beneficed*, 18 *Edw.* 3. *cap.* 2. or generally into the *Prelates* and the *Clergy*, 9 *Edw.* 2. *cap.* 15. 14 *Edw.* 3. *cap.* 1. and 3. 18 *Edw.* 3. 2. 7. and 25 *Edw.* 3. 2. 4. and 8 of *Hen.* 6. *cap.* 1. And in all Acts and grants of Subsidies made by the *Clergie* to the Kings or Queens of *England* since the 32 of *Hen.* 8. (when the Clergie Subsidies first began to be confirmed by Act of Parliament.

So also in the *Latin* Idiom, which comes neerest home,

Nos

Nos Prelati & Clerus, in the submission of the *Clergy* to King *Henry* the eighth, (†) and in the sentence of divorse against *Anne of Clere*, (†) and in the Instrument of the grant of the *Clergy* Subsidies presented to the Kings of *England* ever since the 27*th*. of Queen *Eliz*. and in the form of the Certificates (*per* (†) *Prelatos & Clerum*) returned by every *Bishop*, to the Lord *High Treasurer*, and finally, *Nos Episcopi*, & Clerus Cantuariensis Provinciæ *in hac Synodo more nostro solito, dum Regni Parliamentum* celebratur, Congregati. (†) in the Petition to *K. K. Phillip* and *Mary*, about the confirmation of the Abby Lands to the Patentees; So that though many Statutes have been made in these latter times, *Excluso Clero*, the Clergy, that is to say, the inferiour *Clergy* (who anciently had their place in Parliaments) being quite shut out, and utterly excluded from those publique Councils; Yet this proves nothing to the point, that any *Act* of *Parliament* hath been counted good, to which the *Bishops* were not called, or at the making of which *Act*, they either were *shut out* by Force, or excluded by Cunning.

(†) *Regist. Waltham.*
(†) *Regist. Cranmer.*
(†) *Stat. 8. Eliz. c. 17. & ever since*
(†) *Stat. 1. Phil. & Mar. c. 8.*

But then besides the so much celebrated Argument of *Excluso Clero*, the Author of the Pamphlet before remembred, hath told us somewhat on the credit of *Kilbancies* book; In which the Justices are made to say 7 *Hen*. 8. "That our *Soveraign Lord the King*, may well hold his "*Parliament* by him, and his *Temporal* Lords, and by the "*Commons* also, without the *Spiritual* Lords, for that the "*Spiritual Lords*, have not any place in the *Parliament* "Chamber, by reason of their *Spiritualties*, but by reason "of their *Temporal* possessions. But first, this is but the opinion of a private man, of no Authority or Esteem (for ought we can find) in the Realm of *England*, and therefore not concluding in so great a businesse. And 2*ly*. admitting him to be a man of more note and credit than perhaps he was, yet he must needs fall short in all respects, both for *abilities* and *reputation*, of Chief Justice *Coke*, whose Judgment to the contrary we have seen before. But 3*ly*. it runs crosse to the antient practice of the *Saxon* times, in which the Bishops sate in *Parliament* as *Spiritual* persons, without relation

relation, to their *Temporal* poſſeſſions, or their *Barons Fees*, as afterwards in the raign of the *Norman* Kings. And finally admitting that *Kilbancies* plea were of weight enough, to keep the Biſhops down from riſiug to their place in *Parliament*, it muſt be ſtrong enough to exclude all the *Temporal* Lords; The *Temporal* Lords being called to Parliament on no other ground, than for the *Temporal* poſſeſſions which they hold by Barony. *Adeo argumenta ab abſurdo petita, ineptos habent exitus*, ſaid *Lactantius* truly, It is the Fate (ſaid he) of ill choſen *Premiſes*, that they produce ridiculous and abſurd *Concluſions*.

There remains one Objection more, and indeed the greateſt, not extant in the Pamphlet before remembred, though poſſibly promoted and occaſioned by it; that is to ſay, that the Biſhops are excluded from their Place and Vote by Act of Parliament, deliberately made and paſſed by the Kings conſent. For anſwer whereunto, it will be neceſſary firſt to ſtate this Queſtion, *viz.* Whether that any two of the *three Eſtates*, confirming or agreeing together, may conclude any thing which tends to the Subverſion of the third. *Bodinus* that renowned *Stateſman*, hath reſolved it negatively, and determined thus; *Nihil a duobus ordinibus diſcerni poſſe, quo uni ex tribus incommodum inferatur*, &c.

(†) *Bodin de Rep. l. 3. c. 7.*

(†) That nothing can be done by two of the *three Eſtates*, to the diſprofit of the third, in caſe the point propoſed be ſuch as concerns them ſeverally, And he reſolved thus in favour of the *Commons* of the Realm of *France*, who were upon the point of being excluded from the Parliament, or Convention of the *three Eſtates*, if he had not notably beſtirred himſelf in their behalf (he being then a *Delegate* or Commiſſioner for one of the Provinces) and by his diligence and care preſerved their Intereſts; And to preſerve their Intereſt, he inſiſted chiefly on the antient cuſtomes of the Realm of *France*, as alſo of the Realms of *Spain* and *England*, and the *Roman Empire*; In each of which it was received for a ruled Caſe, *Nihil a duobus ordinibus ſtatui poſſe, quo uni ex tribus prejudicium crearetur*, That nothing could be done by any of the *two Eſtates*, unto the prejudice of the third.

And

And if it were a ruled Case, then in the English Parliaments, there is no reason why it should be otherwise in the present times, the Equity and Justice of it being still the same, and the same reasons for it now as forcible as they could be then. Had it been otherwise resolved of in the former ages, wherein the *Clergy* were so prevalent in all publique Counsels; how easie a matter had it been for them, either by joyning with all the *Nobility* to exclude the *Commons*, or by joyning with the *Comonalty* to exclude the *Nobles*? Or having too much Conscience to venture in so great a change, and alteration, so Incompatible, Inconsistent with the Constitution of a Parliament; how easily might they have suppressed the *Potency*, and impair the *Priveleges* of either of the other two, by working on the humours or affections of the one to keep down the other?

Nor doth it help the matter in the least degree to say that the Exclusion of the *Bishops* from the House of Peers, was not done meerly by the procurement of some of the other two Estates, but by the Assent of the King, of whom the Laws say *He can do no wrong*, And by an Act of Parliament whereof our Lawyers say, *que nul doit imaginer chose dishonourable*, (†) that no man is to think dishonourable. For we know well in what condition the King was when he passed that *Act*, to what extremities he was reduced, on what terms he stood, how he was forced to withdraw from his City of *London*, to part with his dear Wife and Children, and in a word, so over-powred by the prevailing Party in the two Houses of *Parliament*, that it was not safe for him (as his Case then was) to deny them any thing. And for the Act of *Parliament* thus insisted on, besides that the Bill had been rejected when it was first brought unto the *Lords*, and that the greater part of the *Lords* were frighted out of the House, when contrary unto the course of *Parliament* it was brought again; it is a point resolved both in Law and Reason, that the Parliament can do nothing to the distruction of it self, and that such Acts as are under a constraint, are not good and valid, whereof we have a fair example in the book of Statutes. (†)

(†) *Plowden in Commentar.*

(†) 15 Ed. 3.

"For whereas the King had granted certain Articles pre-
"tended to be granted in the Form of a Statute, expreſly
"contrary to the Laws of the Realm, and his own Preroga-
"tive and Rights Royal *(mark it for this is juſt the caſe)*
"which he had yielded to eſcue the dangers, which by de-
"nying of the ſame were like to follow in the ſame
"Parliament, it was *repealed* in theſe following
words; *It ſeemed good to the ſaid Earls, Barons, and other wiſe men, that ſince the Statute did not proceed of our free* Will, the ſame be void; and ought not to *have the name nor ſtrength of a* Statute, *and therefore by their Counſell and Aſſent we have decreed the ſaid* Statute *to be void, &c.* Or if it ſhould not be repealed in a Formal manner, yet is this Act however gotten, void in effect already by a former Statute, in which it was enacted in full Parliament, and at the ſelf ſame place where this Act was gained, *That the Great Charter* (by which, and many other Titles, the Biſhops held their place in Parliament) *ſhould be kept in all points, and if any* Statute *be made to the contrary, it ſhall be holden for none.* (†)

(†) 42 Ed. 3. c. 1.

More Arguments than theſe againſt the Biſhops Place and Vote in Parliament I have no where found. And theſe being anſwered and reſelled, I hope the point in queſtion hath been fairly proved, *viz. That the Biſhops make a Fundamental and Eſſential part of our Engliſh Parliaments.*

FINIS.